

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-655782-D2 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Melvin Arlie Sammons

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1595

Melvin Arlie Sammons

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 20 December 1965, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Ordinary Seaman on board the United States SS REUBEN TIPTON under authority of the document above described, on or about 9 April 1965, Appellant failed to perform his regular assigned duties and wrongfully absented himself from the REUBEN TIPTON while it was in the port of Lake Charles, Louisiana; and assaulted and battered the Chief Mate on board the vessel while it was in the port of Lake Charles, Louisiana.

At the hearing, Appellant entered a plea of not guilty to the charge and each specification. Appellant was present without Counsel when the hearing was convened on the afternoon of 24 May 1965, and was continued until the mornings of 8 August and 22 October. On both occasions, the person charged was not present but he was represented by professional Counsel. In order to give Counsel time in which to locate the person charged, the hearing was again continued until the morning of 8 December. Prior to the final hearing, Counsel stated to the Investigating Officer that efforts to locate the person charged were unsuccessful and in view of the fact that a stipulation had been made as to the testimony of three potential defense witnesses, he would rest his case without further appearance. Hence, the hearing was concluded on 8 December 1965 in absentia.

The Investigating Officer introduced into evidence a certified extract from the Shipping Articles, a certified copy of Official Logbook entries, testimony of the Chief Mate, and the deposition of the Master.

In defense, Appellant offered in evidence the written statement of a crew member and the corroborating stipulated statements of three crew members concerning the contentious nature of the Chief Mate.

The decision was served on 7 July 1966 after Appellant's name was placed on the Seaman Locator List. Appeal was timely filed.

FINDINGS OF FACT

On 9 April 1965, Appellant was serving as Ordinary Seaman on board the United States SS REUBEN TIPTON and acting under authority of his document while the ship was in the port of Lake Charles, Louisiana.

During a routine check between 0815 and 0830 to see if the men, including the Appellant, on the 0800 to 1200 watch were at their proper duty stations, the Chief Mate found that Appellant was not on board the vessel. His search included the Appellant's quarters, making an inquiry of the Boatswain, and places aboard the vessel where Appellant should have been present and performing his duties.

The Chief Mate told the Boatswain, that he wanted the Appellant to report to him when Appellant returned to the vessel. He then reported this absence to the Master. Since the ship was set to sail at 1600, the Chief Mate asked the Agent to get him another Ordinary Seaman when the Appellant had not returned by approximately 1200. In the meantime, the Master had made out the Appellant's payroll voucher and had given it to the Chief Mate to be signed by the Appellant.

Sometime between 1300 and 1330, the Appellant reported to the Chief Mate after coming on board. They proceeded to the Chief Mate's quarters where the Appellant was asked to sign the pay voucher. As Appellant was about to comply, the Master entered the cabin and, upon seeing the transaction taking place, withdrew.

At this time, Appellant laid the pen down and stated to the Mate: "Okay, Mate, stand up and get yours." He then struck the Chief Mate on the side of the face. Further blows were ward off by the Chief Mate and he managed to leave the room to seek help.

At about 1342, the Chief Mate entered the Master's quarters. The Master observed that the Chief Mate had blood stains on his face and shirt. When confronted by the Master and the Chief Mate, the Appellant made the following statement: "If the Chief Mate wants more of the same, he'll get it."

The Appellant was sent to pack his gear and was removed from the vessel by county police authorities. The Chief Mate's injury did not require stitches and he was able to treat it without a doctor's assistance.

The Appellant's prior record is as follows: Admonished on 5 August 1957 at New York for absence without leave, SS DURANGO VICTORY; suspension for two months from 3 January 1963 and four months on eight months probation at Seattle for absence without leave, failure to perform duties and failure to perform duties due to intoxication, SS GOPHER STATE.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order of the Examiner is too severe.

Appellant states that his attorney failed to represent him properly at the hearing. By failing to contact witnesses whose names were supplied by the Appellant, testimony proving his lack of guilt was not introduced. Appellant states that such testimony would have been given by the Third Mate who was an eyewitness to the alleged assault and battery. In addition, an unnamed Able Seaman and an Ordinary Seaman could have testified to the fact that the Appellant was being harassed repeatedly by the Chief Mate. The Appellant further contends that his past record attests to the fact that he is not a troublemaker.

OPINION

The record fails to support any of Appellant's contentions. As to the alleged eyewitness to the assault and battery, the Appellant stated to the Examiner that the Third Mate "wanted no part" of the hearing and the Appellant did not want "to bring him in" or get "him in trouble either." (R.9)

In addition, the Chief Mate testified that there was no other person in his quarters at the time of the incident (R.24) and the Master's answers to the Direct Interrogatories tend to corroborate this statement. Furthermore, Appellant's Counsel indicated that there was not witnesses to the incident. (R.36) The Third Mate's testimony is among those stipulated and is concerned with the Chief's Mate's belligerent attitude. (R.37) Although establishing a climate of antagonism, the attitude of the Chief Mate does not prove that the battery was justified or did not occur.

CONCLUSION

The findings of the Examiner are supported by substantial and probative evidence. Under the circumstances, the order is considered to be fair and reasonable and, therefore, not too severe.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 20 December 1965, is AFFIRMED.

W.J. Smith
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 15th day of December 1966.

INDEX

Assaulting (including battery)

on Chief Mate

Failure to perform duties

unauthorized absence from ship

Witnesses

testimony of, by stipulation